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TOC Hierarchy: Vol: 59

Agency: Environmental Protection Agency

Document Type: Notices

FR Date: Mar 1994

FR Citation: 59 FR 10382

Full FR Date: March 4, 1994

Page Count: 4

Description: Municipal solid waste landfill permit programs; adequacy determinations: Delaware

[FRL-4845-5]

Delaware: Final Determination of Adequacy of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of final determination of full program adequacy for the State of Delaware's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) applied

therefore, a public hearing was not held.

In the State's final application for adequacy determination, Delaware proposed revisions to those portions of their existing regulations which did not meet the Federal requirements in EPA's 40 CFR part 258. EPA tentatively determined in the November 15, 1993 Federal Register that once adopted as final regulation, Delaware's proposed regulations would ensure compliance with 40 CFR part 258. Delaware has made the regulatory changes specified in the November 15, 1993 Federal Register, and as listed below; the revised Delaware Regulations Governing Solid Waste (DRGSW) became effective on November 24, 1993.

Subpart A-General

Section 258.2 Definitions-Where appropriate, the State has adopted key terms and definitions which will more clearly ensure compliance with the 40 CFR part 258 Criteria. These key definitions have been included in section 3 of the DRGSW.

Subpart B-Location Restrictions

Section 258.10 Airport Safety-The State has amended Section 5.A.3. of the DRGSW to require that the Federal Aviation Administration (FAA) and affected airport(s) are notified of a proposed landfill located within 5 miles of an airport.

Section 258.11 Floodplains-Delaware has included the requirements and terms of this section in Section 5.A.4.a. of the DRGSW.

Sections 258.13 Fault Areas, 258.14 Seismic Impact Zones, and 258.15 Unstable Areas-The State has included the requirements and terms of these sections in Sections 5.A.4.h., 5.A.4.i., and 5.A.4.j., respectively, of the DRGSW.

Section 258.16 Closure of Existing MSWLF Units-Delaware has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C-Operating Criteria

Section 258.20 Excluding Receipt of Hazardous Waste and § 258.26 Run-on/Run-off Control Systems-The State has amended Sections 5.I.2.1. and 5.F.2. of the DRGSW, to include the respective requirements of these sections.

Section 258.23 Explosive Gas Control-The State has amended Section 5.E.4. of the DRGSW to require the specific response actions of this section when critical levels of explosive gas are exceeded.

Subpart D-Design Criteria

Section 258.40 Design Criteria-The State has adopted EPA's performance standard for landfill design as specified in § 258.40(a)(1), (c) and (d) by amending Section 5.B.2. of the DRGSW to include these requirements.

Subpart E-Groundwater Monitoring and Corrective Action

Section 258.51 Groundwater Monitoring Systems-The State has adopted EPA's relevant point of compliance (150 meters), within which the downgradient monitoring wells must be located. Sections 5.G.2.b. and 5.G.4.g. of the DRGSW includes this requirement.

Section 258.53 Groundwater Sampling and Analysis Requirements-The State now requires, through amended DRGSW Section 5.G.3.a., that unfiltered groundwater samples be obtained except where turbidity cannot be controlled through careful well construction, development, and sampling. In addition, the State has adopted

believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the Federal Register. All of the requirements and obligations in Delaware's program are currently in effect as a matter of State law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: February 24, 1994.

William T. Wisniewski,
Acting Regional Administrator.

[FR Doc. 94-4993 Filed 3-3-94; 8:45 am]
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